IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3695 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SALMABIBI W/O LATE NURMOHAMMEDJIYAUDDIN

Versus

MANAGAR ARBUDA MILLS LTD

Appearance:

1. Special Civil Application No. 3695 of 1990

MR MA SAPA for Petitioner No. 1

MR DG CHAUHAN for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 10/09/2004

ORAL JUDGEMENT

In the present petition, the petitioner, wife of the deceased workman, has challenged the order of the

Appellate Authority under the Payment of Gratuity Act ("the said Act" for short) dated 30th April 1990 by which the Appellate Authority was pleased to set aside the order dated 31st July 1989 of the Controlling Authority under the said Act. By the said order dated 31st July 1989, the Controlling Authority was pleased to direct that the respondent should pay to the petitioner an amount of Rs.21,495.15 ps towards gratuity with 10 per cent interest from 19.10.87 till actual payment.

2. The Appellate Authority, however, set aside the said order of the Controlling Authority by its impugned order darted 30th April 1990. The sole ground on which the Appellate Authority allowed the appeal was that the Controlling Authority had no jurisdiction under the said Act to entertain the application of the petitioner and direct payment of gratuity since, in the opinion of the appellate Authority, the entitlement of the petitioner for payment of gratuity did not flow from the provisions of the said Act, but was pursuant to a separate scheme formulated by the respondent Mill Company.

3. Section 4(1) of the said Act provides for payment of gratuity upon superannuation or retirement or resignation or death or disablement of an employee. Sub-section (5) of section 4 of the said Act provides that nothing in the said section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer. Section 8 of the said Act provides, inter alia, that if the amount of gratuity payable under the said Act is not paid by the employer within the prescribed time to the person entitled thereto, the Controlling Authority shall issue a certificate for that amount to the Collector who will recover the same together with compound interest thereon at such rate as may be notified. A combined reading of the said sections makes it clear that the Controlling Authority under the Payment of Gratuity Act would get jurisdiction to entertain an application of an employee or any person entitled to payment of gratuity only if the liability is arising from the said Act and not otherwise. In that view of the matter, I do not find any illegality in the conclusion of the Appellate Authority and the petition therefore, cannot be allowed.

4. Learned advocate for the petitioner states that the respondent was directed to deposit an amount of Rs.25,306.40 ps. in this Court. From the order dated 26.6.97, it appears that the said amount is being invested in fixed deposit receipt from time to time during the pendency of the petition. In the impugned

order of the Appellate Authority also, the respondent had contended that the respondent was always ready and willing to pay the gratuity amount and therefore direction with respect to grant of interest should be set aside. In this view of the matter, since there is no dispute about the entitlement of the petitioner to receive the gratuity amount, since the said amount has already ordered to be deposited by this Court and the deposit has also been made by the respondents, since the petitioner is clamouring for receiving the gratuity amount payable to her on account of death of her husband since long and since the respondent has not chosen to oppose this petition, I am of the view that the petitioner should be permitted to withdraw the said amount deposited by the respondent and lying in the fixed deposit receipts as ordered by this Court, during the pendency of this petition.

5. In the result, while upholding the order of the appellate authority, it is still necessary to direct the Registry to pay to the petitioner the amount deposited by the respondent pursuant to order dated 16.6.95 along with accrued interest thereon. The petition stands disposed of accordingly. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)
(vjn)